

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition for Forbearance of the)	DA 98-111
Cellular Telecommunications)	
Industry Association)	

COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation and its telephone and wireless companies ("GTE") hereby submit comments in response to the above-referenced Petition for Forbearance ("Petition") filed by the Cellular Telephone Industry Association ("CTIA").

In the Petition, CTIA asks the Federal Communications Commission ("FCC" or "Commission") to forbear from enforcing the June 30, 1999 implementation deadline for commercial mobile radio service ("CMRS") service provider number portability, at least until the completion of the five-year build-out period for broadband personal communications services ("PCS") has expired. Once build-out is completed, CTIA urges the Commission to reconsider whether enforcement of the service provider number portability requirement will foster CMRS competition. For the reasons set forth below, GTE supports the CTIA Petition.

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I. Introduction

The CTIA Petition asks the FCC to exercise its authority under Section 10 of the Communications Act ("the Act")¹ to forbear from enforcing the requirement that CMRS providers implement service provider number portability by June 30, 1999. That requirement, adopted in 1996, directs certain CMRS providers (cellular, broadband PCS, and covered specialized mobile radio ("SMR") service providers) to enable CMRS customers to retain their phone numbers when switching CMRS service providers. In adopting the CMRS service provider number portability requirement, the FCC found that number portability will eliminate a disincentive to switch carriers and thereby foster competition among CMRS providers and potentially between CMRS providers and wireline service providers.²

Section 160 of the Act sets forth a three-part test to be used by the Commission in evaluating whether to forbear from enforcing any regulation. That test obligates the Commission to forbear from applying any regulation where the Commission determines that:

- (1) enforcement of such regulation . . . is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation . . . is not necessary for the protection of consumers; and

¹ 47 U.S.C. § 160.

² Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, 11 FCC Rcd 8352, 8433-8438 (1996) (hereinafter "*First Report and Order*").

- (3) forbearance from applying such provision or regulation is consistent with the public interest.³

In evaluating part three of this test, the statute requires the Commission to consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”⁴

II. Discussion

A. CTIA Has Demonstrated that Broadband PCS Providers Can Best Enhance Their Ability to Compete By Building Out Their Networks.

CTIA argues that new information derived from broadband PCS providers’ experience in the marketplace warrants a fresh look at whether the Commission should enforce its service provider number portability requirements. It argues that the CMRS number portability requirements were adopted when broadband PCS was in its infancy. In particular, it notes that the Commission found number portability to be an essential element in broadband PCS providers’ ability to compete on a meaningful basis with more established CMRS offerings.

CTIA argues that evidence now available shows that factors other than number portability are more important to broadband PCS providers in their efforts to compete in the marketplace. Significantly, it states that the CEOs of most of its broadband PCS provider-members seek to devote as much capital as possible to network build out and marketing. These CEOs, CTIA claims, have concluded “that CMRS number portability

³ 47 U.S.C. § 160(a).

⁴ 47 U.S.C. § 160(b).

imposes more of a financial burden than a competitive benefit for their entry into the CMRS market.”⁵ Citing limited capital resources, CTIA’s member PCS-provider companies believe that, at this time, it would be far better to devote those resources to building out their networks, aggressive advertising campaigns, and reducing consumer prices. In light of these priorities, the service provider number portability requirement is an unnecessary and costly burden with which to comply.

CTIA argues further that the broadband CMRS marketplace is currently flourishing without service provider number portability. It provides evidence that CMRS subscribership is increasing and prices are falling as new PCS providers enter the marketplace.⁶ It argues that to sustain this competition, broadband PCS providers must be free to devote existing resources to expanding coverage areas and advertising.⁷

GTE agrees with CTIA’s analysis of the broadband PCS market and the need for CMRS service provider number portability. GTE provides broadband PCS in three markets: Seattle and Spokane, Washington, and Cincinnati, Ohio. GTE, like other PCS providers, is operating with finite capital resources. GTE must use these resources to pay operating costs, finance investment in network build out, fund advertising campaigns, and finance compliance with regulatory requirements like service provider number portability. As such, any capital resources GTE must use to pay for network upgrades to facilitate service provider number portability necessarily

⁵ Petition at 3-4.

⁶ *Id.* at 5-6.

⁷ *Id.* at 6.

requires GTE to decrease investment in network build out and spending on customer advertising.⁸

GTE's experience in its PCS and other CMRS markets has enabled it to conclude that investment in network build out and spending on advertising enhances its ability to compete more than would implementation of service provider number portability. Accordingly, GTE supports CTIA's request for forbearance and urges the Commission not to consider enforcing the CMRS service provider number portability requirement until after broadband PCS network build out is complete.

B. CTIA Has Demonstrated that Forbearance from Enforcing the CMRS Service Provider Number Portability Requirements Is Justified Under the Statutory Three-Part Test.

CTIA contends that forbearance from applying the CMRS service provider number portability requirements is justified under the statutory three-part test. It argues that the first two-steps of the test are satisfied because the competitive nature of the marketplace will prevent any carrier from engaging in unjust or unreasonable pricing or from harming consumers. Indeed, CTIA argues that consumers will best be served by freeing broadband PCS providers to concentrate their resources on improving coverage and more rapidly introducing additional facilities-based competition.⁹ Regarding the third step of the statutory inquiry, CTIA contends that number portability, at this time, has not been proven to influence competition. It argues that competition, and therefore

⁸ This dilemma is not limited to PCS providers. Other CMRS providers also operate with finite capital budgets. Thus, in the case of cellular providers, compliance with service provider number portability requirements detracts from carriers' ability to convert their networks to digital service or to add new cell sites.

⁹ *Id.* at 7-9.

the public interest, will best be served by allowing carriers to spend capital dollars on elements more essential to their ability to compete in the market.¹⁰

GTE agrees with CTIA's analysis of the three-part test for forbearance. Given the nature of competition in the CMRS marketplace, CMRS providers are not able to engage in unreasonable acts or practices or to engage in unreasonable discrimination. In addition, GTE agrees that FCC regulation in general and service provider number portability in particular are not necessary to protect consumers. CMRS customers have proven time and again that they will switch providers whenever they become dissatisfied with a carrier's service, practices, or prices. The addition of broadband PCS and enhanced SMR providers to the market gives consumers even more service alternatives.

In that regard, GTE notes that the CMRS marketplace, without service provider number portability, is already substantially competitive. One year ago, the FCC concluded that the CMRS marketplace was subject to "emerging competition."¹¹ The FCC found, for example, that since it issued its *First Report* to Congress in 1995, the FCC had issued over 1500 new CMRS licenses, that many of these licensees had begun entering the marketplace, that new entrants had appeared to accelerate cellular conversion to digital technology and caused cellular providers to offer lower-priced

¹⁰ *Id.* at 9.

¹¹ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Second Report*, FCC 97-75 (released March 25, 1997) (hereinafter "*Second Report*") at i.

service packages to CMRS customers.¹² Since that report was adopted, the FCC has continued to issue CMRS licenses. More importantly, licensed entities continue to enter markets across the country. Thus, while the FCC, in 1997, stopped short of finding the CMRS market to be fully competitive, it clearly indicated that its policies were working to bring full competition to the marketplace. One year later, competition in the CMRS market is significantly stronger.

Turning to step three of the statutory analysis, GTE agrees with CTIA that forbearance from enforcing the CMRS service provider number portability requirement is in the public interest. GTE agrees with CTIA that the number portability requirement harms competition by devoting scarce resources away from investment that will help make CMRS providers more competitive.

GTE does not believe that service provider number portability is necessary for full competition in the wireless marketplace. Unlike wireline customers, wireless customers do not typically publish their phone numbers in any way. As a result, there is typically no cost incurred by wireless customers to change phone numbers. Indeed, the high rate of churn among CMRS customers is proof that wireless customers are not restricted by the inability to port numbers.

As noted above, the FCC, at the time of the *First Report and Order*, considered the CMRS number portability requirement as a means of promoting competition among CMRS providers and between CMRS providers and wireline service providers. In so finding, the FCC relied largely on comments filed by PCS providers in adopting the

¹² *Id.*

CMRS number portability requirements.¹³ Since that time, however, market experience has taught broadband PCS providers that other uses for capital resources promote competition better than number portability. Most importantly, new entrants must build networks capable of competing with other CMRS providers and aggressively advertise their service to the public.¹⁴ Based on this experience, both GTE and CTIA believe that the public interest will be better served by allowing unfettered network build out than by requiring carriers to implement number portability at this time. Given that CMRS providers must sacrifice network build out and advertising in order to implement service provider number portability, the FCC can best promote CMRS competition by electing to forbear from enforcing the CMRS service provider number portability requirement.

¹³ See, e.g., *First Report and Order* at 8426-8427 (¶¶ 144-145).

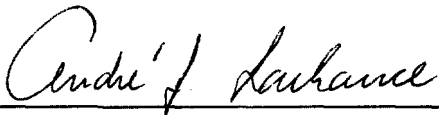
¹⁴ Equally important, existing cellular carriers must upgrade and digitalize their networks in order to meet the competition.

III. Conclusion

GTE supports CTIA's petition seeking forbearance from enforcing the CMRS service provider number portability requirement. Implementation of service provider number portability will not significantly affect CMRS competition and will divert precious resources away from network build out and aggressive advertising campaigns. Moreover, forbearance from enforcing this requirement is justified under the Communications Act.

Respectfully submitted,

GTE Service Corporation and its telephone
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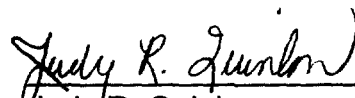
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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Comments of GTE Service Corporation" have been mailed by first class United States mail, postage prepaid, on February 23, 1998, to the parties listed below:

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